IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 889 of 2005

For Approval and Signature:

HON'BLE MR.JUSTICE D.A.MEHTA Sd/-
and
HON'BLE MS.JUSTICE H.N.DEVANI Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

DILIP CHANDULAL SAH

Versus

UNION OF NDIA

Appearance:

1. Special Civil Application No. 889 of 2005
MR NM KAPADIA for Petitioner No. 1
NOTICE SERVED BY DS for Respondent No. 1-2
MR JITENDRA MALKAN for Respondent No.1.

CORAM : HON'BLE MR.JUSTICE D.A.MEHTA
and
HON'BLE MS.JUSTICE H.N.DEVANI

Date of decision: 13/04/2005

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE D.A.MEHTA)

1 This petition has been moved challenging Order-in-Original dated 28th April,1995 made by respondent No.1 and the order dated 22nd June,2004 passed by respondent No.2. In light of the undisputed facts which have come on record and the view that the Court is inclined to take in the matter, the matter is taken up for final hearing and disposal today. Rule. Mr.Jitendra Malkan waives service for respondent No.1. There is no appearance on behalf of respondent No.2.

2 Heard Mr.N.M.Kapadia and Mr.Jitendra Malkan, learned Advocates for the respective parties.

3 Customs, Excise and Service Tax Appellate Tribunal (CESTAT) issued notice dated 1st March,2004 informing the petitioner that the matter is posted for hearing on 15th March,2004 at 10.30 hrs. The petitioner sought adjournment on the ground that the petitioner was sick and had suffered injuries on legs, that he was unable to make any kind of journey and was medically advised to take complete rest. The aforesaid adjournment application in the form of telegram, fax, and application in writing were duly forwarded as the record reveals. In fact paragraph No.1 of the impugned order of CESTAT records that such application had been received by CESTAT. CESTAT has rejected the request for adjournment on the ground that the case was very old and it had been specifically posted for hearing on 18th March,2004.

4 In paragraph No.1 of the impugned order of CESTAT it has been recorded that the appeal was posted for hearing on 18th March,2004 but the xerox copy of the notice of hearing issued by the Registry of CESTAT, which is produced on record, categorically denotes that the date of hearing was 15th March,2004. Therefore, even if the observation made by CESTAT that the matter was posted for hearing on 18th March,2004 could be ascribed to slip of pen /typing error, what is more disturbing is the fact that the impugned order specifically records at the bottom of the order after paragraph No.8 "pronounced on 22/6/2004". The learned President of CESTAT has appended the signature to the order on 18th June,2004.

5 In these circumstances, it is apparent that the impugned order has been made three months after the date of hearing, even as recorded by CESTAT in its order, and after rejecting the adjournment application made by the petitioner. It appears that CESTAT has lost sight of the fact that it had rejected adjournment application qua the

hearing fixed in March,2004 and hence the order made after a period of three months from the date of hearing, 15/3/2004 or 18/3/2004, could not have been made in such circumstances. The order suffers from vice of non-application of mind as well as violation of principles of natural justice.

6 The impugned order dated 18/22-06-2004 is in the peculiar facts and circumstances of the case quashed and set aside. The appeal relatable to the petitioner is restored to file in the circumstances and CESTAT is directed to hear both the parties and decide the appeal afresh after granting adequate and reasonable opportunity of hearing. Needless to state that the CESTAT shall not be influenced by the discussion on merits made in the earlier order.

7 The petition is accordingly allowed. Rule made absolute. There shall be no order as to costs.

(D.A.Mehta, J)

(H.N.Devani,J)

m.m.bhatt